PUBLIC PROSECUTOR

v.

SEE HEE MENG

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[FT CRIMINAL TRIAL NO. 50 OF 1985]
29 JUNE 1988

CRIMINAL LAW: *Dangerous Drugs - Accused allegedly running away from police - Seen throwing a plastic bag over a wall - Plastic bag found to contain drugs - Accused alleged that plastic bag was found later and that there was no chase by the police - Whether reasonable doubt created.*

The accused was charged under s. 39B(1)(a) of the Dangerous Drugs Act 1952 for trafficking 155.11 grammes of heroin at No. 45B, Jalan Sarikei, Kuala Lumpur. The police visited the premises and upon entry into the house the Inspector saw the accused carrying a bag running towards the back portion of the house. Two of the police officers chased after the accused and one of the officers saw the accused throw the bag over the wall which fell onto the zinc roof of premises No. 45A below. He was then instructed by the Inspector to retrieve the bag from the roof. The bag contained 155.11 grammes of heroin.

The accused alleged that there was no chase by the police and that he did not throw the bag over the wall. He gave evidence that he was at the time of the police visit near the front walking towards the hall in the front of the premises and that the police then arrested him. Evidence was given on behalf of the accused that the accused was arrested first and whilst a search of the premises was being done a police officer observed a bag on the zinc roof of the floor below and he informed the Inspector who then ordered him to retrieve it which was then found to contain heroin.

Held:

[1] The defendant had failed to create a reasonable doubt in view of the totality of the evidence and had failed to discharge the onus placed on him on the presumptions that he knew the drug was heroin and that he was trafficking in it.

[2] The accused is found guilty and convicted of the charge.

Legislation referred to:
Dangerous Drugs Act 1952, ss. 37(d), (da), 39B(1)(a), (2)
Evidence Act 1950, s. 154

For the public prosecutor - Siti Zainab Bte Omar, DPP
For the accused - D.G. Segran; M/s. Manuel & Segran

JUDGMENT

KC Vohrah J:

The accused was charged as follows:

> That you on 14 January 1985 at about 9.50 p.m., at premises No. 45B, Jalan Sarikei, Off Jalan Pahang, in the city of Kuala Lumpur, in the Federal Territory, did traffic in a dangerous drug, to wit, 155.11 grammes of heroin, and that you have thereby committed an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952, punishable under s. 39B(2) of the same Act.

The evidence was that the accused was running along a corridor between a row of rooms and a half wall chased by two police officer and that the accused threw a paper over the wall which was on his left. The bag landed on a small zinc roof covering part of the airwell in the premises below. The bag held 6 envelopes, 5 of which contained 10 small plastic packets and one envelope which contained 12 small packets. The 62 small packets had substances which on analysis by the chemist was reported to contain 155.11 grammes of heroin.

Detective Corporal Zakee (PW1) (then Detective Constable) saw the incident. He said he accompanied Inspector Megat Mohd. Aminuddin (PW4) and 4 others including one Detective Corporal Tan Kim Huat to premises No. 45B, Jalan Sarikei, Off Jalan Pahang, Kuala Lumpur. On arrival at the premises Inspector Megat knocked at the door and it was opened by a female Chinese. Inspector Megat entered the premises followed by him.

He said that while Inspector Megat was introducing himself as a police officer he saw a male Chinese, carrying a bag, running towards the back portion of the premises through a passage way; on the left was a half wall with empty space below and on the right were rooms. He was at the back of Inspector Megat and he gave chase to the man with Corporal Tan following him. He saw the man hold a bag in his hand. He then saw the man throw the bag (over the half wall) and the bag fell on the zinc roof of premises No. 45A below. He then arrested the person, the accused.

He said when he apprehended the accused Detective Corporal Tan was with him and that the latter assisted him in arresting the accused.

He then informed Inspector Megat that the bag had fallen on to the roof of the premises No. 45A and showed him the place. Inspector Megat instructed him to pick up the bag. He went to premises No. 45A on the ground floor, borrowed a ladder, and retrieved the bag (P6). It was a paper bag which was folded and he saw there were envelopes inside the bag. He folded it back and handed it over to Inspector Megat on his return to premises No. 45B.

He said Inspector Megat took out 6 envelopes (P7A to F) from the bag and then opened up the envelopes and in each envelope there was granular and powdery substance in the packets. (10 packets each in 5 envelopes - $P7A^{a-j}$. $P7B^{a-j}$, $P7C^{a-j}$, $P7D^{a-j}$, $P7E^{a-j}$, and 12 packets in envelope P7F - $P7F^{a-l}$).

He said that the envelopes were opened up in the presence of the accused, other police personnel, the "owner" of the premises and 2 females.

Inspector Megat (PW3) gave evidence that he raided the said premises with 6 other police personnel. He said after entering the premises a female had opened the door in response to his knocks on the door, he saw someone run to the back. He then instructed Zakee (PW1) and Detective Corporal Tan to give chase which they did with Zakee leading the chase. He did not see what happened after that. He said he stood guard with one Detective Corporal Khabri in the hall of the premises while the other police personnel conducted a search.

He said that later Zakee told him that the person that he chased had thrown a package on to the zinc (roof) of the premises below and showed him the person, the accused. Inspector Megat said he then instructed Zakee to go and get the package. Zakee went down and Inspector Megat saw him use a ladder to retrieve the package. He said Zakee then later handed the package to him in the hall. He said he examined the package in the presence of the police personnel, the accused and other 3 occupants of the house. He said it contained 6 envelopes, 5 of which contained 10 plastic packets each and one envelope containing 12 plastic packets, all the plastic packets containing substances suspected to be heroin.

The investigation officer of the case (PW4) Inspector Raja Khalid stated he drew a sketch plan (P2) of the scene and instructed photographs of the scene (P3A to G) and photographs of the Exhibits (P4A to C) to be taken. He said that he sent the exhibits he received from Inspector Megat to the chemist in a sealed envelope and he received the envelope (P5) (which was sealed with the chemistry department seal No. 1 P.J.) from the chemist together with a chemist report (P13) a copy of which he served on the accused.

The chemist report showed that the 62 packets of substances in 6 envelopes held in the bag contained 155.11 grams of heroin.

Cross-examination of the witnesses Zakee and Inspector Megat was directed to show that the case against the accused was a fabricated one.

And allegations were put to them to show that.

I shall deal with 4 of the allegations first. These are:

1. that on entering the premises the police party moved straight to the back portion of the house near the toilet;
2. that the accused at that time was in the passage near the front walking towards the hall in the front of the premises;
3. that some police officers gained entry into the back toilet and arrested one Wong Sang;
4. that the police party then took the accused and Wong Sang to the hall.

PW1 Zakee denied the allegations. He had earlier said that when he entered the premises he was behind Inspector Megat. He marked X in the sketch plan as the place where he was when he first saw the accused. This was at the beginning of the passage way. He said that the accused at point X1 opposite the midpoint of a room marked F threw the bag. He said under cross-examination that the distance between X and S was about 8 feet. When asked whether the accused was running fast he said, "Just running!" He demonstrated how the accused carried the bag - in his right hand with the paper bag folded over. He said he did not gain on the accused before the accused threw the bag down. When asked how the accused threw the bag he said he was not certain if he threw it with the right or left hand. He said he only saw the bag "fly". When asked if the bag was thrown in an arc or whether it was dropped (whether "it was going down") he said he was not certain as it happened in a split second. He denied that he was not certain because he did not see or he was not certain if it was thrown away forcefully.

Zakee during cross-examination was asked about whether the bag was folded once or twice when he retrieved it from the zinc roof. He said it was folded over once but earlier in examination-in-chief he said it was folded twice with one end loose but he said that was when he demonstrated how the accused carried the bag while running but in fact he did state in his evidence during examination-in-chief that when he retrieved the bag, the bag was folded the same way expect that the top end was not folded over (as a third fold). He denied saying that. He said that when he retrieved the bag, the bag was folded over once. He denied that he was under cross-examination saying the bag had opened up to a single fold to forestall any question that if the bag was indeed thrown the folds have "opened up."

As for Inspector Megat he had stated in examination-in-chief that when he entered the premises he saw as if someone was running to the back and that he instructed Zakee and Detective Corporal Tan to give chase which they did. He said he did not witness the chase

as he stood guard at the hall of the premises while his other men conducted a search at the back portion of the premises. He said that later Zakee brought the accused to him and told him that the accused had thrown a package on to the zinc roof the premises below.

During examination-in-chief when he was referred to the sketch plan he said he was about 1 to 2 feet from the door he entered when he first saw the accused. He then stated when he first saw the accused, the accused was about to run. Bearing in mind that Inspector Megat was in front of Zakee his evidence that he saw the accused about to run at T which was nearer the beginning of the passage way whilst Zakee had said he had seen the accused running at X1 and which was further away from the beginning of the passage there does not appear to be any contradiction on the evidence between them. Inspector Megat also denied that the accused was arrested after one Wong Sang had been arrested in a toilet at the far end of the passage and it was only after that while the accused was walking along the passage way that he was arrested.

As for the folds in the bag he said he only saw the bag when it was handed to him by Zakee in the hall and at that time it had only one fold. This was of course, needless, to say after Zakee had retrieved the bag from the zinc and we do not know how he handled it before handing it over to Inspector Megat.

To my mind the question of how many folds the bag had is to rely on matters of inconsequential details putting a heavy premium on memory for recall of minor details which occurred fleetingly and which took place 3 years ago. Discrepancies there will be in any case and where the discrepancies are inconsequential as these I do not see how they can affect the main thrust of the case that the accused threw the bag whilst being chased.

I now come to one Wong Sang having been arrested in the toilet at the far end of the passage. There is no dispute that he was arrested and he had a packet of heroin with him. The evidence of Zakee and Inspector Megat was that Wong Sang was arrested after the accused had been arrested, not as alleged that the police on entering the premises had gone straight to the back part for a search and had arrested Wong Sang first before the accused was arrested.

The other allegations were an attempt to show that the accused and Wong Sang were brought in together to the hall of the premises and this took place in the sight of civilian witnesses including one Leng Seng who had been arrested in the street below and brought up into the premises and that shortly after a couple arrived and their room was searched and after the search a bag was spotted on the zinc roof and that then only Zakee went down to pick it up. In other words the defence was that these set of facts which the defence alleged showed that there could not have been a chase by Zakee and Corporal Tan immediately the police arrived at the premises.

Both Zakee and Inspector Megat denied the allegations.

Zakee was shown a search list D8 which had been given to the accused. It shows that 7 police personnel had gone on the raid at the premises. D9 which the police had retained was a copy of D8 showed a cancellation of DPC 63202 Zakee said DPC 63202 referred to DPC Jaafar, not a woman police constable and that he was guarding an arrestee who had been arrested at the ground floor before the raid had been conducted on the premises. He was adamant that Jaafar and this arrestee did not come up to the premises at any time. Inspector Megat also denied that Jaafar and the arrestee were in the hall.

He was also adamant that when he gave the bag which he had retrieved from the zinc roof to Inspector Megat it was in the presence of the police personnel who had conducted the raid on the premises, the accused, the persons who had been arrested at the toilet and two

women. When asked if the person who had been arrested in the toilet had been arrested first (i.e., earlier than the accused) Zakee hesitated and after a long silence said the accused was arrested first. Noticing the uncertainty he appeared to have I asked him if he knew this of his personal knowledge and he replied "Yes" though he did not see Wong Sang being arrested.

While Zakee agreed with defence Counsel that while the police party waited for police transport to arrive after Inspector Megat had phoned for the transport then one Chong Hock and his girl friend came into the premises he said he could not remember if he and others proceeded to a room to conduct a search. Inspector Megat too could not remember if Zakee was instructed to conduct the search with the others. Zakee and Inspector Megat however denied that after the search then only the bag was sighted on the roof and that Zakee informed an officer about it and the officer said, "Try tengok" and that after he went to retrieve the bag.

At the close of the prosecution's case the cross-examination, or a *prima facie* basis, did not affect the main thrust of the prosecution's case that while being chased by Zakee and Detective Corporal Tan the accused threw a paper bag on to a piece of zinc roofing in the premises below and that the bag contained substances which showed that they contained heroin. Invoking the presumptions in s. 37(d) of the Dangerous Drugs Act 1952 he was in possession of these substances and he knew the nature of the heroin contained therein. The heroin being 155.11 grams of heroin invoking the presumptions in s. 37(da) he is presumed to have been trafficking in the drugs. And I called upon him to make his defence on the charge.

Defence

The accused elected to make his defence on oath. He called 4 witnesses.

His defence was a denial that he ran along the corridor with a bag and that while running he threw the bag containing heroin on to the zinc roof in the premises below. He said that he was then at the far end of the corridor about to walk towards the toilet near the hall at the other end of the corridor after finding the toilet at the far end occupied when the police party rushed in and accosted him and asked him if he was "Ah Meng." He said while reading books in the room of his girl friend Sui Sui he had a stomach ache at 10 p.m. and that was why he was looking for a toilet. He said that a woman constable said, "Ya lah! Lu lah Ah Meng." The police arrested him and also arrested one Wong Sang for possession of 1 packet of heroin who was in the far end toilet. They were brought into the hall of the premises where amongst the civilian witnesses was one Ah Leng who had been arrested earlier and brought into the premises. After a search had been conducted of the rooms in the premises except for a room at the end of the corridor the police telephoned for police transport to pick the party and the arrestees. Then a couple came up and the police searched their room, the room at the end of the corridor, next to the rear toilet. It was after this that he heard one of the police personnel say "Encik sana ada beg" and another person say "Try tengok". Two or three went downstairs and about 10 minutes later they came back and one of them carrying a bag showed the bag to him and said it was his (the accused's) bag.

He also said he gave a cautioned statement (D14A) to the police. In this statement he did not state he was in the corridor when the police came. In fact he said he was in Sui's room. He said that while in the house he saw the police come up the room and it was opened by the owner of the house. He did however state that after all those in the house had been arrested and the rooms searched several police personnel went downstairs and 10 minutes

later they came up with a plastic bag and opened it in front of him and that he found there were 6 envelopes inside. He stated the police told him that I envelope contained 12 packets of heroin and after that they arrested all in the house and brought them to Cawangan Anti Dadah office. One of the questions recorded in the cautioned statement was whether he threw the drugs through the window. He replied, "No".

I will deal with the apparent discrepancy between his testimony in Court and his statement in the cautioned statement at a later stage.

His first witness was DW2, Low Kim Lam. From the evidence she gave she was the chief tenant of premises No. 45B and she had rented the room nearest to the front end of the corridor to the accused who had taken the room for his "girl friend" Sui Sui.

DW2 said that on the night in question she was in the toilet (near the hall) when she heard knocking at the door. It was the police at the door, they identified themselves so, and she let them in. Some of the police personnel went to the kitchen (i.e., the back portion of the premises at other end of corridor) and some remained in the hall. Those who went out to the kitchen area came back to the hall bringing 3 persons, the accused, Wong Sang and Wong Sang's wife, the accused being hand-cuffed to Wong Sang. The three were told to squat in the hall while the police went to search the corridor and the kitchen area. She could not see what they did as she was not allowed to see what they were doing. She said of the police party "some went up, some went down." One Ah Leng was brought up and he "was put together with Wong Sang and Ah Meng." This was in contrast to what the accused said that when he was brought to the hall Ah Leng was already there.

The police then enquired about her home address as they said they wanted to call for transport.

She said that while waiting for transport to arrive her younger brother and her employee, her brother's girl friend, arrived after which they were questioned. The girl then led the police to see her home but she did not see any search being done.

She said that one of the police party went to the girl's room. Then, "I do not know whether they were playing the fool, or they were there - suddenly I heard - then they sounded excited - some of them went out of my door."

They returned some 5 to 10 minutes later and appeared happy carrying a bag similar to P6. They showed it to the accused and said, "This is yours" though she did not know if this was directed to the accused or the others.

She said she did not know where the accused was when the police first entered the house. When asked if the police chased the accused her reply was, "I did not pay attention as there was no light in the corridor - although there was a fluorescent tube there - it was not on." She said the light was from the hall at the corridor.

She was told that Zakee and Inspector Megat had said that the bag P6 was recovered before the young people come into the premises and she was asked if that was correct. She said she did not understand what was meant by "before they came in." The defence Counsel explained, "the police have told Court that this bag was recovered by them before your brother and his girl friend came to your premises that night." She replied "No, as far as I can remember when brother and girl friend come back they took the girl to her room for a look and then later they went down - some of them went down."

The accused had mentioned that a woman police constable was in the raiding party that night and she had told him, "Ya lah! Lu lah Ah Meng." DW2 however said she did not see a woman in the police party. The accused had stated that he had previously been arrested in 1982 by a police party and the woman PC was in that party and so was one Tan Kim Huat. Tan Kim Huat, a detective corporal who was offered to the defence gave evidence as DW3. In reply to defence Counsel DW3 confirmed that he had, prior to the raid on the premises on 14 January 1985, laid an ambush at the accused's flat at Selayang Flats. He said he was also in the raid on 14 January 1985 on premises 45B. When cross-examined by the DPP he confirmed giving chase behind Zakee to the accused. He said he saw the accused holding a package but when he hand-cuffed him after Zakee had caught hold of him the package was no longer in his hand. He said that Zakee informed him that the accused had thrown the package on to the zinc roof and he took a look and saw it. Later Zakee informed Inspector Megat about it and Inspector Megat informed Zakee to go down and recover it. He also said he could not remember if there was a woman PC in the previous arrest but there was no woman officer at the raid that night (i.e., on 14 January 1985). And he denied that Ah Leng who had been arrested outside the premises earlier had ever been brought into the premises.

Under re-examination the witness stated he did not see the package being thrown as his view was blocked by Zakee who was in front of him. He agreed though that the corridor was brightly lit. Defence Counsel then applied to cross-examine him under s. 154 of the Evidence Act 1950.

I allowed defence Counsel under s. 154 of the Evidence Act to put leading question to DW3 although DW3 was called by him. In effect I allowed defence Counsel to cross-examine his own witness. The witness gave evidence under cross-examination by the DPP which was destructive of the defence's case and I allowed cross-examination of this witness by defence Counsel as his evidence was opposed to the defence and in order that his veracity could be tested. He denied that the reason for his stating that he did not see the accused throw the bag was because the little remnants of his conscience did not allow him to say that as it never happened. He reiterated that it was only after the bag was found then the couple (DW2's brother and his girl friend) arrived at the premises. He also said that the accused was not hand-cuffed to Wong Song and he denied that Wong Song was the first to be arrested at the premises.

The accused's other witness, Tay, Choo Chang (DW5), was chief tenant of premises 45A which were directly below the premises where the accused was arrested.

She gave evidence that while she was on the ground floor looking for players for a majong game at which the accused was to play she was asked to identify an arrested person by the police. Shortly after that the police with the arrestee went upstairs. Then she saw Cheng Hock return with his girl friend and go up. Then 15 to 20 minutes later the police came down to her premises and borrowed a ladder.

She thus would seem to confirm what the accused had said about one Ah Leng who had been arrested by the police and Cheng Hock and his girl friend being in the premises 45A when the police was there.

She said she had phoned the accused's wife to ask the accused to come for a game of majong that night; he came at 8.30 p.m. to her premises but asked her if there were other players for the game and when she said no, he told him he would go upstairs to take a rest and that at about 10 p.m. if there were players she should call him. That was the reason, she said she went down to look for players.

The wife of the accused DW4 was also called. She merely gave evidence that the girl friend of Cheng Hock, Fong Yee - and the evidence is not disputed that Cheng Hock and his girl friend had gone to the premises where the accused had been arrested - had come to Court having being called by her but that Inspector Megat had called this woman to the police office by the side of my Court on 9 June 1988 and that the next day she did not turn up a witness in the case. She said however that the woman turned up on 11 June (the day she (wife of accused) herself gave evidence) but she left before the Court started its proceedings that day. She said that when the defence Counsel found out that Fong Yee had refused to talk the defence Counsel told her to go back.

I now come to the further evaluation of the evidence adduced. The prosecution's case was that the accused was chased by two policemen along a corridor of the premises which they had entered and the chase was immediately after the police entered the premises. And the accused was seen to throw a bag on to a zinc roof below. The defence story was that there was no such chase; the bag was seen on the roof towards the tail end of the search of the premises after the accused and one Wong Sang had been arrested and after a man and a woman had come in and the room of the woman had been searched.

On a review of the totality of the evidence adduced by both prosecution and defence, the evidence was clear cut that the accused occupied a room nearest to the hall after the toilet along the corridor. He was seen running from the area roughly in front of that room. It was argued that if the accused wanted to throw the bag he would have done so through the lourved windows in rooms A and B next to the hall. But to have access to rooms A and B would have meant having to cross the hall; but the police were already entering the premises. In any event the accused did not occupy either room A or B. So when the evidence of Inspector Megat (PW3), Zakee (PW1) and Tan Kim Huat (DW3) was that the accused was running along the corridor in the direction of the back portion, the kitchen portion, of the premises, it is highly probable. It lends credence to the inference that he came out from the room he occupied nearest to the hall along the corridor.

In his evidence the accused said he was already at the corridor, at the far end (near the back portion) of the corridor. He had wanted to go to the toilet there. He went there because it was a squatting toilet. But it was occupied and he was about to walk to the sitting toilet at the other end (nearer the hall) when the police rushed in and arrested him. I find that difficult to believe. From the sketch it is clear the sitting toilet (C1) was just next to the room he occupied yet he had to go all the way to the other toilet at the back portion to use the squatting toilet (C2).

In his cautioned statement (D14A) the accused told a different story. In that statement he said when he was in the house (premises) he saw the police come up the house and that the door of the house (premises) was opened by the house owner. When it was opened the police rushed in and at that time he was in Sui Sui's room. I would agree that it would have been better if the cautioned statement had contained the questions which the recording officer had asked of the accused so that a clearer picture of the whole statement may be had but to my mind there can be no ambiguity in that part of his statement which I reproduce below:

> Pintu rumah itu dibuka oleh tuan rumah. Setelah dibuka anggota polis semua menyerbu masuk ke dalam rumah. Semasa itu saya berada didalam bilek Sui Sui.

It is clear in the statement that he said that when the police entered the house he was in Sui Sui's room, not as he say in his evidence that he was outside along the corridor near the back toilet intending to go to the front toilet.

In any event the chief tenant of the premises, DW2, said she was in the toilet nearer the hall when she heard knocking at the door and she went out to open the door. No mention was made by the accused that he, from the back portion where he was, saw her go out of the toilet. Surely that is a relevant corroborative fact of his presence along the corridor. With all the knocking on the door and he wanting to go to the front toilet after finding the back toilet occupied it seems strange he made no mention of the fact that he saw her go out of the toilet.

The story of the accused was that there was no chase at all. A chase along a corridor is certainly not an ordinary event. It would certainly have been noticed. The chief tenant, DW2, was asked "when police entered house you saw them go to the kitchen did you see how they chased the accused?" Her answer was not a categorical "no". She was in the hall, the police were in the premises, she would have heard running feet. Her answer was, "I did not pay attention as there was no light at the corridor - although there was a fluorescent tube there, it was not on."

Again she was asked, "PW1 (Zakee) and PW3 (Inspector Megat) - two police witnesses - have said that this bag P6 was recovered before the young couple came into the premises - is that correct?" Her answer was 'I don't understand what you mean "before they came in"' The question was put again, "the police have told the Court that this bag P6 was recovered by them before your brother and his girl friend came to your premises that night". Her answer again was not a categorical "no" but "No, as far as I can remember when my brother and girl came back they took the girl to her room for a look and then later they went down - some of them went down."

Her answers were not definite and firm and she typified the other witness DW5 who seemed to have seen Cheng Hock and his girl friend go up before the police came down to her premises to borrow a ladder to recover the bag of drugs on her zinc roof. This was the woman as was stated earlier who said she had phoned the accused's wife to tell the accused to come to her premises to play majong; and that when he came there at 8.30 p.m. and found out there was no players there he told her he would go upstairs to take a rest and at about 10.00 p.m. if there were players she should call him. He went up to his girl friend's room. It is strange the accused never mentioned this episode in his evidence at all; his evidence was that he had gone to the room of Sui Sui to look for her and had read books there waiting for her to come from 8.30 p.m. to 10.00 p.m.

To come back to the woman who said she saw Cheng Hock go up with the girl friend. She said that after the accused had gone upstairs Cheng Hock and another came back and went upstairs. She said she saw that. She was immediately asked by defence Counsel, "Before you saw Cheng Hock and girl go upstairs did police approach you." She replied, "No, they went upstairs." Only when given a leading question by defence Counsel, "Did police approach you and ask you whether you could recognise a person they had arrested" did she then say, "Yes I told him I did not know." And then she recounted that after she had gone downstairs to look for players for majong the police brought someone to her for identification after which he was brought upstairs and then Cheng Hock came along with his girl friend and went upstairs. She said it was about 15 to 20 minutes after Cheng Hock and the girl had gone upstairs then the police came to her premises and asked to borrow a ladder.

From her evidence in examination-in-chief it appeared quite clearly that Ah Leng had gone up with the police and then Cheng Hock and the girl then went up. She was asked under cross-examination, "Did police and Cheng Hock go up together?" Her answer was not a definite no but "I did not see whether the police and Cheng Hock went up together." Later

under further cross-examination she said, "Cheng Hock came back first then the government men went up." And then when questioned further she also said, "Cheng Hock first went up first followed by government men." She was then asked, "And the government men brought the arrestee as well?" She replied, "Yes."

These witness DW5 and DW2 are to my mind not worthy of credit - they had have relied ostensibly on the prosecution's story of the raid, but weaved in untruths into the facts relating to the raid and search of the premises the timing of the discovery of the bag of drugs to be after the arrival of Cheng Hock and his girl friend at the premises; and this was an attempt to corroborate the accused's story that the bag was discovered after both of them had arrived.

Apart from the discrepancies which I have pointed elsewhere there is one discrepancy with regard to a woman police constable who the accused alleged was in the raiding party and who apparently recognised him. The prosecution's case was that there was no woman officer in the raid. DW3, Detective Tan Kim Huat, too, said that there was no woman police officer in that raid that night. It seems to me that a woman PC being present in a party of male officers would certainly be something that everyone would remember. DW2 the chief tenant who recounted the entry of the police into her premises clearly said that she did not see a woman police constable. The accused had said she was a Malay woman. DW2 said she did not see any Malay woman in civilian clothes in the premises. Clearly the story by the accused of the woman PC in the raid was a red herring thrown in to confuse the issues.

The defence story was that Ah Leng was brought into the premises before the discovery of the bag was made. The accused said that Ah Leng was in the hall when he (the accused) was brought into the hall with Wong Sang. DW2's evidence on the other hand was clear that the accused and Wong Sang, hand-cuffed together, were brought to the hall and it was only after that Ah Leng arrived. The prosecution's evidence was that the accused was indeed brought to the hall. But it will be remembered that Detective Corporal Tan said that the accused was not hand-cuffed to Wong Sang. And it was the prosecution's story that Ah Leng was not brought up the premises at all as he had been arrested outside the premises well before the raid on the premises. To my mind the story of Ah Leng being in the premises was brought in again to confuse the issue.

Before I proceed to another matter let me deal with the argument of defence Counsel who attacked the reference to a question by the recording officer in the cautioned statement whether the accused threw the drugs through a window. He asked if the prosecution's story was that the accused threw the bag while running over the half wall how is it that the recording officer got the idea that the accused threw it through the window implying that the police had fabricated the prosecution's case. There is absolutely no evidence that the recording officer knew the facts of the case. It is also clear in the salutory police practice adopted in this country that a cautioned statement is made to a police officer who had no connection with the case of the accused whose statement he is to record and that he would normally only knew the briefest fact that the person was arrested in connection with a drug offence. This has been seen regularly in our Courts when recording officers are examined in regard to cautioned statements which are recorded and sought to be admitted. I certainly cannot infer anything adverse from the question that was posed by the recording officer.

I now come to the matter of the reluctant witness. The defence darkly hinted that the police had interfered with the calling of a defence witness, Fong Yee, the girl friend of Cheng Hock. Presumably the defence would have the Court believe that she could have testified that after she had showed her room to the police soon after her arrival at the premises with Cheng Hock that then only the police spotted the bag of drugs on the zinc roof in the premises

below. DW4 had said that Inspector Megat had called this witness at the end of one day's hearing to a police office next to the Court and she did not appear in Court the next day. Inspector Megat gave evidence on recall that on 9 June 1988 he saw Fong Yee on his way out of the Court house and called her to the police office (which is just beside the Court). He had been looking for her since the trial began but had failed to locate her and he enquired of her about her address, where she worked and where she lived. He denied preventing her from giving evidence in Court. Inspector Raja Khalid who was in the office - I called him as a Court witness - said that he was at a table in the police office doing some writing and Inspector Megat was in front of him. He said Inspector Megat asked the woman where she was working and where she was staying. He said the woman gave some answers and the whole thing lasted 1 to 2 minutes. Inspector Raja Khalid also said he noticed that the woman was at the door but was not sure whether she had entered the office or not. He also confirmed that the police was trying to locate her. Now the evidence of the wife of the accused, DW4, in fact stated that when Fong Yee was called in the door was not closed. If indeed Fong Yee had been threatened or intimated would the door of the police office have been left open? I accept what Inspectors Megat and Raja Khalid said that Inspector Megat inquired about her address and her whereabouts and that the police had been trying to locate her. Inspector Raja Khalid did say he was not certain if she could have been threatened by Inspector Megat but Inspector Khalid was being cautious and exact (and that is my impression of him) - he had gone back to his writing and did not concentrate "in hearing to Inspector Megat if there was a conversation". My view is that the enquiries were innocent. I cannot see how an inference of a witness being threatened can be infered. Although she did not appear as witness the next day of the trial she did appear the subsequent day and it is in evidence that she refused to talk and defence Counsel told her to go back. DW4 said Fong Yee appeared to be scared but did not know what the reason was. In the absence of an explanation from her in the light of the evidence adduced in regard to the matter I cannot see how an inference can be made that she was threatened by the police not to give evidence.

Having reviewed the totality of the evidence my view is that the defence has not created any reasonable doubt on the prosecution's case that the accused threw the bag containing the heroin on the roof below and that he was in possession of the heroin.

He has also not, on a balance of probabilities, discharged the onus placed on him on the presumptions that he knew the drug was heroin and that he was trafficking in it. I consequently find him guilty and convict him on the charge.

Also found at [1988] 2 CLJ 500